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IN THE

Supreme Court of the United States

LARRY G. MASSANARI,
ACTING COMMISSIONER OF SOCIAL SECURITY,
Petitioner,

v.

SIGMON COAL COMPANY, INC., and
JERICOL MINING, INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF *AMICUS CURIAE* THE UNITED MINE WORKERS OF AMERICA IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST

The United Mine Workers of America (the "UMWA" or "Union"), an international labor organization of approximately one hundred and twenty thousand members, is dedicated to representing the interests of the nation's coal miners and their families.[1] Since its creation in 1890, the UMWA has sought to secure for miners safe and just working conditions, fair wages, comprehensive, quality health care, and opportunities for gainful and humane employment in the nation's coal mines, processing plants and associated facilities. One of the UMWA's proudest accomplishments is helping to secure the passage of the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), *codified in relevant part at,* 26 U.S.C.§§ 9701 *et seq.*

On its face, the Coal Act appears to be a revolutionary new concept in the preservation of health care for retired UMWA members and their dependents. Upon close examination, however, it is clear that the Act is not so much a radical event, as it is the culmination of a long and arduous history of promises made, broken, and finally kept, as coal operators continually attempted to evade and avoid their collective bargaining and health care obligations. In order to appreciate fully the purpose and intent of the Coal Act, it is necessary to understand the practices of employers in the nation's coal fields that finally compelled Congress to intervene and secure the health care of these retirees.

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[1]Counsel for all parties have consented to the filing of this *amicus* brief, and the UMWA has filed those consents with the Clerk of the Court. Sup. Ct. R. 37.3. No counsel for a party authored this brief in whole or in part. No person or entity other than the UMWA has made a monetary contribution to the preparation or submission of this brief. Sup. Ct. R. 37.6.

Throughout its history, the UMWA has endured contentious labor-management relations. *See generally*, Maier B. Fox, *United We Stand, The United Mine Workers of America 1890-1990* (1990); *Gateway Coal Co. v. UMWA*, 414 U.S. 368, 388-89 (1974)(Douglas, J., dissenting) (describing the "reckless disregard for the miner's safety [that] permeates the history of [the coal] industry" and the job of coal mining as "the most dangerous occupation in America"); *United States v. UMWA*, 330 U.S. 258 (1947) (discussing government takeover of mines). Additionally, the nature of coal mining – extracting a finite, non-renewable product from limited openings in the earth – creates an inherently unstable economic atmosphere. Consequently, coal industry employers are notorious for opening and shutting down operations because of effects on their profitability due to geological difficulties, environmental regulation, fluctuations in the price of coal and its transportation, and consumer demands. Rather than honor the contractual commitments they made in collective bargaining, however, many employers have a lengthy history of utilizing creative corporate maneuvers to evade and avoid unwanted liabilities, particularly those related to health care, in order to maximize profits at the expense of their employees. It was against this factual background that Congress created the Coal Act.

The question presented by Petitioner is whether Congress succeeded in its efforts to close one of the coal operators' principal avenues of escape by holding a successor in interest to a signatory operator liable for retiree health care under the terms of the Coal Act, or whether the intent of Congress will be frustrated by creating another substantial loophole in the comprehensive statutory scheme.

In view of its institutional knowledge of the collective bargaining history within the coal mining industry, and its first hand experience with the unfettered creativity of coal operators, the UMWA can provide the Court with valuable insight into the question raised by this case. *See* Grant Crandall, *et al.*, *Hiding Behind the Corporate Veil: Employer Abuse of the Corporate Form to Avoid or Deny Workers' Collectively Bargained and Statutory Rights*, 100 W.Va. L. Rev. 537 (1998). Additionally, the matter before the Court directly involves the continued provision of health benefits to hundreds of retired coal miners and their dependents as well as indirectly the health benefits of tens of thousands of other retired coal miners and their spouses and dependents. These retirees were, and many still are, members of the UMWA. Inasmuch as the question raised by the Petition will be addressed at length by others, the UMWA's submission focuses primarily on an explication and amplification of the factual background of the Coal Act. The UMWA, as *amicus curiae*, submits its brief in support of the Petitioner to reverse the holding of the Fourth Circuit Court of Appeals and to uphold the rulings issued by the District of Columbia and Third Circuit Courts of Appeals.

STATEMENT OF THE CASE

Coal mining has played a significant role in the industrial history of our nation. It was the fuel which powered the industrial explosion that altered our national landscape. For example, at the turn of the nineteenth century, the rapidly expanding iron and steel industries relied heavily on coal to light their furnaces. During this period, coal reserves were plentiful and mined mainly by recent immigrants compelled to work underground for long hours in abysmal

and unsafe conditions. As recognized by the President's Commission on Coal, "[c]oal is unique among the major energy resources in its close identification with the people who produce it." *The President's Commission on Coal, The American Coal Miner: A Report on Community and Living Conditions in the Coalfields*, iv (1980) (the "*President's Commission*"). Unlike other industries "coal and the coal miner are intertwined in American legend and history." *Id.*

Our national dependence on coal escalated throughout the twentieth century and the number of coal miners swelled to over half a million in 1950. *Coal Commission Report: A Report to the Secretary of Labor and the American People (Nov. 1990), p. 12, Figure 2 ("Coal Comm'n Report")*. This report was reprinted, and its findings were discussed, in the *Coal Commission Report on Health Benefits of Retired Coal Miners, Hearing before the Subcommittee on Medicare and Long-Term Care of the Committee of Finance*, S. Hrg. 102-524 Cong., 1st Sess., Sept. 25, 1991. During our nation's involvement in both World Wars, the continued and uninterrupted production of coal was absolutely critical to the success of the nation's war efforts. After the second World War, however, traditional coal mining jobs declined significantly due to increased mechanization. Moreover, following the end of the energy crisis in the 1970's, the price of coal fell to near record lows and the coal industry suffered a significant retraction. *Coal Comm'n Report*, pp. 11-12.

Throughout this changing history, job security and opportunity has long been a primary concern for UMWA members. Coal miners face severe economic instability because their jobs depend on the ability of coal operators to locate, recover and profitably sell a limited, non-renewable energy source. The mining and processing of coal is affected

by a variety of forces, including physical difficulties which may be encountered from time to time in extracting coal from a particular seam, governmental regulation of permissible sulphur content, fluctuating transportation costs, and significant fluctuations in the market price for coal, all of which affect production and profitability on an ongoing basis. As mining firms continually start up and shut down coal mining and coal processing operations at various locations in response to these forces, and as companies continually acquire and dispose of mining facilities, workers who both mine and process the coal go through periods of intense activity and prolonged layoffs. Thus, the UMWA has continually strived to maintain economic security in this extractive industry and has long included in its national collective bargaining agreement detailed seniority and recall provisions designed to mitigate the job insecurity faced by employees in this industry.

Over the years, however, the competitive pressures of the industry led coal operators to target the UMWA and its hard-won gains for its members as a means of reducing costs. Coal operators began using increasingly aggressive and creative tactics to shed their collective bargaining obligations in order to maximize profits. Chief among these tactics was, and is, the manipulation of the corporate successor principles. This problem became particularly acute in the mid-1970's following two Supreme Court decisions interpreting federal labor laws relating to successor employers.

In *NLRB v. Burns Int'l Security Services*, 406 U.S. 272, 291 (1972), this Court determined that a successor employer is not obligated to assume its predecessor's collective bargaining agreement even though the successor is doing the same work in the same place with the same

employees as its predecessor. Two years later in *Howard Johnson Co. v. Detroit Local Joint Executive Bd.*, 417 U.S. 249, 260 (1974), this Court held that the existence of a successorship clause in collective bargaining agreements between a union and an employer does not bind a successor employer to the agreement and that the successor employer is free to refuse to assume any obligations under the agreement.

Following these decisions, it became clear that a successorship clause simply declaring a contract binding on the signatory employer and its "successors and assigns" was of limited benefit because it could not be enforced effectively against a successor entity. These cases were especially troubling to the UMWA because, as stated above, a coal miner's employment depends on the profitable location and recovery of a limited resource. Additionally, the UMWA was particularly concerned about the effect of these cases on its ability to continue to ensure health care coverage to its active and retired members at a time when health care costs were beginning to rise and the collectively-bargained employee health care funds saw an influx of new workers due to the energy crisis.

Accordingly, in entering negotiations for the 1974 national contract, the UMWA wanted to assure that the interests of its membership were protected from any operation being sold, transferred or otherwise moved from one entity to another. The product of the 1974 bargaining efforts was an active successorship provision found in Article I of the UMWA National Bituminous Coal Wage Agreement ("NBCWA") which provides in relevant part:

> [The] Employer promise[s] that its operations covered by this Agreement shall not be sold,

> conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement.

By reason of this provision, signatory operators were bound to secure the commitment of the successor to accept and comply with the extant collective bargaining agreement.

In the 1974 NBCWA, the Union and its contracting employers also made a number of changes to the existing program of health and retirement benefits. First, they agreed to divide the old United Mine Workers of America Welfare and Retirement Fund of 1950 into four separate multiemployer plans. Two of the new plans provided pension benefits to retired miners. The other two plans – the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan – provided health benefits to retired miners.[2] The new 1974 Benefit Plan contained a negotiated plan of benefits that replaced the Trustee-established benefit levels and also made express reference to the lifetime commitment of health care for retired miners, their spouses, and certain dependents.

In 1977, the coal operators demanded that the 1974 Benefit Plan be eliminated and that all health care be provided directly by the individual employers. The parties failed to reach agreement on this issue and a protracted strike ensued. *District 17, UMWA v. Allied Corp.*, 765 F.2d 412 (4th Cir. 1985)(*en banc*).

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[2]The UMWA 1974 Benefit Trust also provided health care to working coal miners.

The 1977-78 strike was settled with a compromise that retained the 1974 Benefit Plan, but changed its function.[3] Under the 1978 NBCWA, working miners and miners who retired on or after January 1, 1976 generally would receive their health benefits from single employer plans maintained by their employers. *See Davon, Inc. v. Shalala*, 75 F.3d 1114, 1118 (7th Cir.), *cert. denied*, 519 U.S. 808 (1996). The 1974 Benefit Plan was retained as an "orphan" plan to provide health benefits on a multiemployer basis to those miners who retired on or after January 1, 1976, but whose former employers were no longer in business. *Coal Comm'n Report*, p. 26.

Additionally, to alleviate the Union's concerns that many coal operators would seek ways to avoid paying for their employees' health care, the parties negotiated the "guarantee" and "evergreen" clauses. The "guarantee" clause was intended to fully guarantee the funding of the benefit and pension funds. Contributing employers were allowed to increase their contributions to the funds, but could not decrease them. *Carbon Fuel Co. v. USX Corp.*, 891 F. Supp. 1186, 1190 (S.D. W. Va. 1995), *aff'd*, 100 F.3d 1124 (4th Cir. 1996). The "evergreen" clause was designed to impose a permanent obligation on employers to contribute to the various pension and benefit plans. *Id. See also UMWA 1974 Pension Trust v. Pittston Co.*, 984 F.2d 469 (D.C. Cir. 1993).

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[3]This dispute affected so much of the nation's economy that President Carter appointed a Presidential Coal Commission to examine the issues that had precipitated the strike, including "health, safety and living conditions in the Nation's coal fields." *Coal Comm'n Report*, p. 27.

The ink had barely dried on this agreement before coal operators resumed their practice of shirking their contractual responsibilities for providing health care to their former employees. For example, Allied Corporation, a large energy company doing business in West Virginia, sold its mining operations during the term of the 1978 NBCWA, but failed to abide by the successorship provision requiring it to secure the agreement of the purchaser to assume the collective bargaining agreement with the UMWA, including Allied's obligations to provide health care. Allied did not sign the 1981 NBCWA. The district court ruled that Allied's obligation to provide health care to its employees did not terminate with the expiration of the 1978 NBCWA, and even if it did, Allied was still liable because it had breached the successorship clause. Thus, Allied was obligated to provide health care coverage to its retirees until it could negotiate with the purchasers to provide the coverage.

On appeal, the Fourth Circuit reversed. On rehearing *en banc*, however, the Court of Appeals held that the district court was correct in ordering Allied to provide health care benefits because it has breached the successorship clause, but suggested that the lower court many have erred in ruling that a coal employer's contractual obligation to provide such benefits continues beyond the term of the NBCWA. *District 17, UMWA v. Allied Corp.*, 765 F.2d 412 (4th Cir. 1985)(*en banc*).

Consistent with their history of evading their obligations, dozens of coal companies then sought to take advantage of the Fourth Circuit's *dicta* and refused to sign a successor NBCWA in the hopes of releasing themselves from liability for their coal employees' health care.

In *District 29, UMWA v. Royal Coal Co.*, 768 F.2d 588 (4th Cir. 1985) ("Royal I"), the Fourth Circuit revisited the issue of whether an employer's obligation for health care survived the life of the collective bargaining agreement and concluded that it does not. In a subsequent decision involving Royal, however, the Court also found that the 1974 Benefit Plan had sole responsibility for providing health benefits to those employees whose employers had left the coal mining industry, and who were no longer signatory to an agreement requiring them to provide benefits, even though they remained financially able to provide those benefits. *District 29, UMWA v. UMWA 1974 Benefit Plan and Trust*, 826 F.2d 280, 283 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988) ("Royal II"); *see also UMWA v. Nobel*, 720 F. Supp. 1169, 1176 (W.D. Pa. 1989), *aff'd without opinion*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991). As a result of these decisions, the 1974 Benefit Plan was left in the unfortunate position of having to provide health care to a growing number of beneficiaries but without a funding source. *See also In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991), *cert. denied*, 502 U.S. 1093 (1991)(LTV successfully sued to establish that 1974 Plan, and not LTV, was responsible to provide health care to LTV's coal industry retirees and their dependents).

With these cases, more and more employers tried to escape through this "latent loophole" by refusing to sign a successor NBCWA, thereby terminating their individual employer health plans, and "dumping" the cost of health care for their retired employees on the 1974 Benefit Plan. *In re Chateaugay Corp.*, 53 F.3d 478, 484 (2d Cir. 1995), *cert. denied*, 516 U.S. 913 (1995); *see also Coal Comm'n Report*, p. 62 ("[d]umping liability is fatal to any multi-employer fund"). Consequently, the 1950 and 1974 Benefit Plans

began to experience considerable financial instability as a result of efforts by employers to reduce or eliminate their contribution and benefit obligations to the UMWA health care system.

Meanwhile, despite the broad successorship clause negotiated in 1974, coal operators renewed their efforts to get out from under their contractual obligations (particularly their retiree health care obligations as they are the most expensive) by shifting production arrangements from signatory operators to leased mine or subcontracting arrangements. The signatory operators then decreased or ceased coal production entirely at their mines, causing mass layoffs, and began purchasing coal mined from their own reserves by non-signatory lessees or subcontractors.[4]

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[4]For example, the Union spent years pursuing Basin Cooperative Services ("Basin") to force it to honor the contract's successorship provision and fulfill its workers' contractual expectations. For years, Basin had served its parent company, Basin Electric Power Cooperative ("Basin Electric"), an eight-state network of about 140 rural electric cooperatives, which had an ongoing and constant need for coal. To rid itself of its UMWA obligations, Basin devised a simple plan: It sold its contractually-covered coal reserves (with an expected mining life of nearly twenty years) to a non-union company, which then mined the coal and sold it back to Basin Electric. After a jury trial, the Union, which had sought approximately $12 million in damages, won a judgment of $6.5 million which was upheld on appeal. *See UMWA v. Basin Cooperative Services*, 53 F.3d 222, 225 (8th Cir. 1995).

To address this new form of corporate manipulation, the UMWA, in 1984, negotiated a work preservation clause requiring the signatory employer to secure from the leasing or subcontracting employer an agreement to offer all available jobs of a classified nature to UMWA members. In this regard, the Union hoped to protect members from job displacement that occurred as coal production shifted.

Unfortunately, this newly-negotiated language was still not enough to rid the UMWA of runaway employers and ease the miners' struggle to keep their jobs and their collective bargaining agreements when their work sites were being transferred to other employers. By the late 1980's, the nation's coal fields saw an increasing number of signatory companies opening non-union mines themselves rather than through subcontracting or leasing, in effect, engaging in double-breasting. As signatory companies directed new work away from union operations and into non-union operations, the unemployment rate for union miners climbed ever upward. *See Coal Comm'n Report*, pp. 11-12.

The UMWA attempted to address this continuing assault on its members in its 1988 contract negotiations. In the 1988 NBCWA, the parties agreed that signatory employers would offer three out of five jobs within the bargaining unit classification at their non-signatory mining operations to their bargaining unit employees. Although this provision did not protect against loss of UMWA-represented jobs, it at least provided affected employees with the opportunity to find other work at non-union mines to which their companies had shifted coal production.

Also, in the 1988 agreement, the Union sought to alleviate the growing problem caused by increasing numbers

of employers abandoning their health care commitments by imposing contractual withdrawal liability on companies that seceded from the UMWA multi-employer health care system. Indeed, the issue of continued benefits for over one hundred thousand beneficiaries was one of the primary causes of the bitter 1989 labor dispute between the UMWA and the Pittston Coal Company. The unrest caused by this dispute permeated not only the nation's coal fields, but the entire country. Largely as a result of the retiree health care issue, national and international attention became focused on the Pittston strike. Thousands of UMWA supporters, including labor, religious and civil rights leaders, were arrested during the strike. "It was to be one of the most bitter strikes in recent labor history." *Coal Commission Report on Health Benefits of Retired Miners: Hearing Before the Subcommittee on Medicare and Long-Term Care of the Senate Committee on Finance*, 102d Cong. 102, 319 (Comm. Print 1991).

The escalation of strike activity led Secretary of Labor Elizabeth Dole to become involved in the Pittston strike. After meeting with striking miners and retirees, as well as both Pittston and the UMWA, she announced that she would appoint former Labor Secretary William J. Usery as a "super mediator" to attempt to resolve the strike. Throughout the subsequent negotiations monitored and supervised by Secretary Usery, it became apparent that the problem of retiree health care was incapable of resolution through the collective bargaining process. After the efforts of Secretary Usery, the parties were able to reach a new agreement, although that agreement was subsequently rejected by the UMWA Trusts. *Id.* at 304.

In announcing the agreement, Secretary Dole also announced that she would be appointing a blue ribbon commission to review the health care issues and to make recommendations to resolve them. Secretary Dole subsequently appointed Secretary Usery as the Chair of the Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission").

After concluding its review, the Coal Commission determined that

> [t]he escalating cost of providing adequate health care to coal miners and their families, particularly the increasing population of orphan retirees, cannot properly or fairly be solved by the parties through collective bargaining alone.

Coal Comm'n Report, p. 3.

Following completion of the Coal Commission's charge, Congress began its own exhaustive examination of the retiree health care crisis. On September 25, 1991, the Subcommittee on Medicare and Long-Term Care of the Senate Finance Committee held a hearing to consider the report and recommendations of the Coal Commission. In his opening remarks, Subcommittee Chairman Rockefeller reiterated that the UMWA benefit trusts were in grave financial condition. Senator Rockefeller also expressed his unequivocal intention to ensure that the broken promises of coal companies would be remedied:

> We are talking about tens of thousands of elderly and often infirm people who long ago

> earned these benefits by firing the furnaces of American industry in war and in peace. *The industry and national commitments to health care for these miners and their families must and will be kept.*

Coal Commission Report on Health Benefits of Retired Miners: Hearing Before the Subcommittee on Medicare and Long-Term Care of the Senate Committee on Finance, 102d Cong. 102, 319 (Comm. Print 1991), pp.2-3 (emphasis supplied).[5]

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[5]Congress also heard testimony from UMWA members who had been victimized by the corporate successor maneuverings of coal operators. For example, Homer Eckley testified that:

> I grew up in a coal mining family, four generations of them. That was back when there was no benefits, nothing. I went into the Service and my dad went on strike, and when he came back they had benefits -- pension and hospitalization. I went into the mine with the idea that when my time came, I could retire and have benefits, plus a pension. *Now they tell me that my mine was sold to another company and they are complaining about paying these benefits.*

Coal Commission Report on Health Benefits of Retired Miners: Hearing Before the Subcommittee on Medicare and Long-Term Care of the Senate Committee on Finance, 102d Cong. 102, 319 (Comm. Print 1991), p. 5 (emphasis supplied).

After several draft versions of legislation, Congress ultimately enacted the Coal Act and President Bush signed it into law on October 24, 1992.

In the meantime, while the Union had been focused on its dispute with Pittston and its efforts to legislatively avert immediate and irreparable harm to hundreds of thousands of retired coal miners and their families, other coal operators had been working to devise a new scheme to avoid the application of the 1988 contractual work preservation provisions. During the term of the 1988 NBCWA, the Union witnessed new non-union mines being opened not by signatory companies, who would be subject to the three-out-of-five job offer program, but by their parent companies or related subsidiary companies. Coal reserves and properties that had been held directly by signatory companies were shifted to newly-created land-holding companies, and then transferred to newly-created corporate entities for development of new mines.

Even with all of the repeated collective bargaining remedies spanning two decades, coal operators continued their attempts to avoid their contractual obligations through various corporate manipulations. Each time the Union thought it had negotiated a provision that would hold the coal companies to their promises, these companies sought new loopholes to exploit.[6] Consequently, when the 1988 NBCWA

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[6]*See e.g., UMWA v. Cyprus Amax Coal Co.*, Civ. No. 97-Z-34 (D. Colo. filed April 22, 1996). In *Cyprus Amax*, the coal operator tried to avoid its bargained-for obligation to secure the purchaser's agreement to assume successorship obligations under the NBCWA by conveying a closed mining facility to a non-union affiliate through a series of intra-corporate transfers.

expired in 1993, the Union's top priority was to address the corporate restructuring that had allowed signatory companies to evade their job preservation promises under the previous NBCWAs.

Negotiations on this issue proved difficult and the UMWA eventually called a selective strike against various companies that lasted for over seven months. Again, Secretary Usery was called upon to assist the parties in reaching agreement. Negotiations finally concluded with the coal operators' agreement that, as limited agents of their parent companies, they would agree that signatories' parent companies would provide the same three-out-of-five job offer program at the non-signatory mines of their other subsidiaries and related companies through a new agreement, the Memorandum of Understanding Regarding Job Opportunities ("Jobs MOU").

While the language of this new provision, combined with the original language governing the three-out-of-five jobs program has operated to provide some miners with work, albeit not under a UMWA contract, disputes still exist,

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The facility was reopened, and the companies took the position that because it had been closed for a period of time before reopening, the facility was not an "operation" under the terms of the NBCWA's successorship clause, inasmuch as it was not actively producing coal at the time of the transfer. On August 28, 2000, a jury found in favor of the Union on the issue of liability, concluding that the facility was subject to Article I of the NBCWA and that the companies had breached this provision. The case is presently pending before the Magistrate Judge for a determination of damages and final judgment.

indicating that despite their promises and the clear intent of these provisions, some companies will engage in transactions to create business structures that, arguably comply with the letter of the agreement, but are structured with the intent of avoiding job promises under the contract. Numerous cases have been heard by the Jobs Monitor[7] regarding attempts by companies to subordinate function to formality to avoid their promises to hire laid off bargaining unit employees. *See KenAmerican Resources, Inc. v. UMWA*, 99 F.3d 1161 (D.C. Cir. 1996)(challenging arbitrator's award in favor of UMWA)

These disputes continue to this day and the UMWA has spent significant resources chasing down companies to hold them to their contractual obligations. *See e.g., UMWA v. Apogee Coal Co.*, Civil Action No. 99-574 (E.D. Ky.) (suit pending against three related corporate defendants for their failure to secure employment and other contractual rights of bargaining unit members when they conveyed mines to a third party in violation of the successorship clause of 1998 NBCWA).

Even under the Coal Act, employers have continued their historical practice of evading responsibility for contractually promised, and now legislatively mandated, health care to their former employees. Literally dozens of lawsuits have been filed by coal employers challenging the Coal Act on any number of grounds and nearly an equal number of suits have been filed by the statutorily-created funds to enforce the provisions of the Act against obligated

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[7]The Jobs Monitor is the designated national arbitrator of disputes that arise under the work preservation clauses of the NBCWAs.

employers. *See e.g., Unity Real Estate Co. v. Hudson*, 178 F.3d 649 (3d Cir.), *cert. denied*, 528 U.S. 963 (1999)(challenging constitutionality of Coal Act); *Penn Allegh Coal Co. v. Holland*, 183 F.3d 860 (D.C. Cir. 1999) (challenging liability for disability pensioners); *Pennsylvania Mines Corp. v. Holland*, 197 F.3d 114 (3d Cir. 1999)(same); *Dixie Fuel Co. v. Apfel*, 171 F.3d 1052 (6th Cir. 1999) (challenging validity of late assignments); *Association of Bituminous Contractors, Inc. v. Apfel*, 156 F.3d 1246 (D.C. Cir. 1998)(constitutionality); *Davon Inc. v. Shalala*, 75 F.3d 1114 (7th Cir.), *cert. denied*, 519 U.S. 808 (1996)(same); *In re Blue Diamond Coal, Co. (Blue Diamond Coal Co. v. Shalala)*, 79 F.3d 516 (6th Cir. 1996), *cert. denied*, 519 U.S. 1055 (1997)(same); *Holland v. Keenan Trucking Co.*, 102 F.3d 786 (4th Cir. 1996); *In re Chateaugay Corp. (LTV Steel Co. v. Shalala)*, 53 F.3d 478 (2d Cir.), *cert. denied*, 516 U.S. 913 (1995)(same); *Pittston Coal Group, Inc. v. UMWA*, 894 F. Supp. 275 (W.D. Va. 1995)(coal companies sued UMWA alleging union breached collective bargaining agreement by lobbying for and causing Congress to enact Coal Act); *Shenango, Inc. v. Apfel, decision pending* 00-2525 (3rd Cir. 2000)(challenging related persons provision and validity of late assignments).

SUMMARY OF THE ARGUMENT

The Fourth Circuit erred in concluding that the Commissioner of Social Security does not have the authority to assign beneficiaries to "successors" to signatory operators. The Coal Act clearly expresses Congress' intent to extend the reach of the Act to successors of signatory operators. An examination of the statute's language, read in light of its broad purpose and expansive scheme of liability, supports such a conclusion. In addition, the assignments to

Respondents are consistent with the Coal Act's stated purpose and its broad remedial goal, which intentionally seeks to spread Combined Fund liability among a wide range of companies, including successors. The court of appeals' restrictive reading of the Coal Act cannot be adopted without causing fundamental damage to the statute - leaving a gaping hole in the Coal Act and producing an absurd result that could not logically have been the intent of Congress.

ARGUMENT

Although the Coal Act expressly provides that a "successor in interest" to a "related person" may be responsible for Coal Act beneficiaries, it does not expressly state that a "successor in interest" to a "signatory operator" is so responsible. Nonetheless, the Commissioner of SSA has reasonably determined that a "successor" is another type of "related person" and is to be treated as such for purposes of making assignments under the Act.

Such a determination is consistent with Congress' decision to close "loopholes" to prevent employers from evading their obligations under the statute. Indeed, the very impetus for the Coal Act was to stop coal operators from escaping their contractual health care responsibilities by creating new corporate forms. To implement this decision, Congress provided that the obligations imposed under the Coal Act will extend to "related persons" and "successors in interest" of such employer. *See* Sections 9701 (c)(2), 9704(a), 9711(c), 9712 (d)(4).

Additionally, as reflected in the legislative history of the Act, Congress recognized that the coal industry was rife with frequently shifting corporate structures and it did not

want to allow responsible operators to be able to shift their liabilities to others. Indeed, as expressed by Senator Wallop, "because of complex corporate structures which are often found in the coal industry, the number of entities made jointly and severally liable for a signatory operator's obligations under the definition of related persons is intentionally very broad." 138 Cong. Rec. 34,002 (1992). Senator Wallop also stated that "related persons" includes "in specific instances successors to the collective bargaining agreement obligations of a signatory operator." *Id.* Finally, Senator Rockefeller remarked that the term "signatory operator" includes "a successor in interest of such operator." *Id.* at 34,033.[8]

Clearly, the failure to permit assignments to the direct successor of a signatory operator would frustrate the intent of Congress to stabilize the financing of the UMWA health care system and to place responsibility for that financing on the persons most responsible for the liabilities. It is difficult to imagine that, outside of the signatory operators themselves, there exist entities who are *more* responsible for these liabilities than successors to the signatory operators. This is

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[8] *See also* Dissenting Opinion of Judge Murnaghan in *Sigmon Coal Co., Inc. v. Apfel*, 226 F.3d 291, 311, n. 4 (4th Cir. 2000):

> Some might suggest that coal companies are unlikely to attempt to profit from such a 'loophole' in the Coal Act, however, this suggestion ignores the fact that coal companies have a long history of using the tools of successorship to maximize shareholder profits at the expense of workers and retirees.

particularly true in light of the fact that Congress went to great lengths to ensure that "related persons" to such operators are jointly and severally liable under the Act. As explained by the D.C. Circuit:

> In light of [the purpose of the Coal Act] and the broad reach of the provisions imposing liability on related persons, we can think of no reason why Congress would have intended to impose liability for the beneficiaries on, for example, a successor in interest to a Coca-Cola bottling company under common control with a signatory coal mine operator while exempting a coal-mining successor in interest to that operator.

R.G. Johnson Co. v. Apfel, 172 F.3d 890, 895 (D.C. Cir. 1999).

Adoption of the Fourth Circuit's determination at issue here would significantly undermine the Congressional decision to support coal industry retirees and hold employers statutorily liable for honoring their promises of health care where the collective bargaining agreements had failed to do so. Coal companies under continuing economic pressures will be encouraged to sell their assets to a successor in order to avoid their obligations resulting in the "same dwindling funding base that Congress intended to rectify by passing the Act." *Sigmon*, 226 F.3d at 311 (Murnaghan, J., dissenting). As fittingly stated by the late Judge Murnaghan, Congress could not have "intended to cure the crisis in the coal industry by infecting it with part of the disease." *Id.*

CONCLUSION

For the foregoing reasons, the Court should reject the ruling below.

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